

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING
Whether there has been a violation
of the Business Opportunity Fraud Act of the
State of Washington by:

Kenneth D. Grammer, dba Vendcorp, Vendcorp
Refreshments, Inc. or VSS Refreshments, their
employees and agents,

Respondents.

SDO - 41 - 00

CONSENT ORDER

Case No. 96-10-0355

THE STATE OF WASHINGTON TO:

Kenneth D. Grammer, dba Vencorp
Vencorp Refreshments, Inc. or
VSS Refreshments
10900 N.E. 8th, Suite 900
Bellevue, WA 98004

INTRODUCTION

The Securities Division, Department of Financial Institutions, State of Washington, and Respondents Kenneth D. Grammer, dba Vendcorp, Vendcorp Refreshments, Inc. or VSS Refreshments do hereby agree to this Consent Order in settlement of the matters alleged herein. Respondents neither admit nor deny the Tentative Findings of Fact and Conclusions of Law as set forth below except as to the jurisdiction of the Securities Division to enter this Consent Order.

TENTATIVE FINDINGS OF FACT

I.

Vencorp Refreshments, Inc., a Washington corporation incorporated on June 4, 1997, doing business as ("dba") VSS Refreshments, and Kenneth D. Grammer, dba Vendcorp, are the sellers of an opportunity involving the offer and sale of vending machines and provide assistance in finding financing and locations for the vending machines (the "vending machine opportunity.") Kenneth D. Grammer

1 ("Grammer") is the President of Vendcorp Refreshments, Inc., and the owner of Vendcorp, a sole
2 proprietorship and predecessor to Vendcorp Refreshments, Inc. or VSS Refreshments.

3 II.

4 On October 16, 1996, Grammer dba Vendcorp applied to the Securities Division for a business
5 opportunity registration permit to offer and sell the vending machine opportunity. That application was
6 filed as Business Opportunity Registration Application File Number B-O0332. In the application,
7 Grammer admitted having sold or leased eighteen business opportunities between June, 1996, and the date
8 of the application. In the offers and sales of those business opportunities, Grammer failed to provide a
9 written disclosure document and to disclose material facts such as his business background and financial
10 condition.

11 On November 19, 1996, the Securities Division entered a Consent Order (Order Number SDO 96-
12 078) relating to Kenneth D. Grammer, dba Vendcorp, in settlement of allegations that Grammer and
13 Vendcorp had violated certain provisions of the Washington Business Opportunity Fraud Act, Chapter
14 19.110 RCW. Those allegations included that Grammer and Vendcorp had offered and/or sold the
15 vending machine opportunity in violation of RCW 19.110.120 because they omitted material facts in
16 connection with the offer, sale or lease of the vending opportunity; that Grammer and Vendcorp had
17 offered and/or sold the vending machine opportunity in violation of RCW 19.110.050(1) because they
18 were not registered prior to offering and selling the vending opportunity to the eighteen purchasers; and
19 that Grammer and Vendcorp had offered and/or sold the vending machine opportunity in violation of RCW
20 19.110.070 because they failed to provide the purchasers with a written disclosure document at least 48
21 hours before the purchasers signed the business opportunity contract. Under the terms of the Consent
22 Order, Kenneth D. Grammer was ordered to refrain from the offer and sale of business opportunities in
23 the state of Washington in violation of the RCW 19.110.120, the anti-fraud provisions of the Business
24 Opportunity Fraud Act, and was ordered to disclose the existence of the Consent Order in Vendcorp's
disclosure document. In addition, Grammer and Vendcorp were ordered cease offering or selling business

1 opportunities in this state unless they had a current business opportunities registration number pursuant to
2 RCW 19.110.050(1), the registration requirement provision of the Business Opportunity Fraud Act, and
3 were ordered to send a copy of the Consent Order along with a cover letter and a copy of a disclosure
4 document to all those who purchased the vending machine opportunity prior to its registration.
5 Registration of the vending machine opportunity was effected on November 15, 1996, (Registration File
6 No. B-O0332), and Grammer and Vendcorp obtained a registration permit that expired on November 15,
7 1997. The registration permit was subsequently renewed until November 15, 1998, but Grammer and
8 Vendcorp did not again renew the business opportunity registration permit upon its lapse on November
9 15, 1998.

10 In February and early March, 1999, Kenneth D. Grammer, Vendcorp Refreshments, Inc. and/or
11 Vendcorp placed or caused to be placed in the classified section of a Seattle area newspaper the following
12 advertisement:

13 Vending New full size equip on location. Will finance. Great ROI...

14 The ad concluded with two alternative local telephone numbers for callers to obtain further
15 information. A Washington resident called one of the numbers given and spoke to Grammer, and after a
16 number of conversations with Grammer was ultimately convinced to enter the vending business with the
17 purchase of two vending machines which the Washington resident understood were to be placed in a fire
18 station in Gig Harbor, Washington. The Washington resident provided Grammer with two personal
19 checks during meetings in the Gig Harbor area that totaled \$3,053.41 as a down payment for the
20 machines. On May 22, 1999, the Washington resident signed an installment contract for the equipment
21 and an "Independent New Vendors Agreement" which provided that "Vendcorp agrees to secure locations
22 for New Vendors for the purpose of placing vending equipment at those locations." Respondents failed to
23 provide the Washington resident with a written disclosure document and to disclose material facts such as
24 business background and financial condition of the seller prior to the execution of the contracts. The
Washington resident soon discovered that, contrary to Grammer's representations, that the fire station had

1 not agreed to have the equipment installed at that location. The Washington resident did not receive
2 delivery of the vending machines and was unable to obtain a refund of the deposit money.

3 On September 3, 1999, Kenneth D. Grammer, as President of Vendcorp Refreshments, Inc. dba
4 VSS Refreshments did again file an application for registration of the vending machine opportunity (File
5 No. B-O0449). This was, however, after the offer and sale of at least one vending opportunity on May 22,
6 1999 in the state of Washington following the expiration of the latest registration permit upon its lapse on
7 November 15, 1998.

8 III.

9 Respondents Vendcorp Refreshments, Inc. dba VSS Refreshments is not currently registered to
10 offer or sell business opportunities in the state of Washington and has not previously been so registered.
11 Respondent Kenneth D. Grammer dba Vendcorp is also not currently registered to sell business
12 opportunities in the state of Washington and has not been so registered following the expiration of his
13 Washington registration permit on November 15, 1998.

14 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

15 CONCLUSIONS OF LAW

16 I.

17 The offer and/or sale of the vending machine opportunity as described in Tentative Findings of
18 Fact I and II above constitutes the offer and/or sale of a business opportunity as defined in RCW
19 19.110.020(1).

20 II.

21 The offer and/or sale of the vending machine opportunity as described in Tentative Findings of
22 Fact I and II was made in violation of RCW 19.110.070 and RCW 19.110.120 because Respondents failed
23 to provide at least one Washington purchaser of the opportunity with a written disclosure document and to
24 disclose material facts such as business background and financial condition of the seller.

III.

1 The offer and/or sale of the vending machine opportunity as described in Tentative Findings of
2 Fact I through III was made in violation of RCW 19.110.050(1) because no business opportunity
3 registration was in effect at the time of the sale to the Washington purchaser.

4 IV.

5 The offer and/or sale of the vending machine business opportunity as described in Tentative
6 Findings of Fact I and II made in violation of the terms of Consent Order SDO-98-078 constitutes a
7 ground for denying effectiveness of a business opportunity registration application pursuant to RCW
8 19.110.050(7)(b). This is because Respondents and their employees and/or agents sold at least one
9 vending machine opportunity in the state of Washington in violation of Consent Order SDO-96-078, an
10 order of the director in which Kenneth D. Grammer dba Vendcorp agreed and were ordered to refrain
11 from the offer and sale of unregistered business opportunities in the state of Washington. RCW
12 19.110.050(7)(b) provides that the director may issue an order denying any applicant's registration if the
13 director finds that the order is in the public interest and that any provision of an order lawfully imposed
14 under the Washington Business Opportunity Fraud Act has been violated.

15 ORDER AND CONSENT

16 Based on the premises of the foregoing,

17 IT IS THEREFORE AGREED AND ORDERED That Respondents Kenneth D. Grammer, dba
18 Vendcorp, Vendcorp Refreshments, Inc. or VSS Refreshments, and their agents and employees, each shall
19 refrain from the offer and sale of business opportunities in the state of Washington in violation of RCW
20 19.110.070 and RCW 19.110.120, the disclosure document and antifraud provisions of the Business
21 Opportunity Fraud Act, respectively.

22 IT IS THEREFORE AGREED AND ORDERED That Respondents Kenneth D. Grammer, dba
23 Vendcorp, Vendcorp Refreshments, Inc. or VSS Refreshments, and their agents and employees, each shall
24 refrain from the offer and sale of business opportunities in the state of Washington in violation of RCW
19.110.050(1), the registration requirement provision of the Business Opportunity Fraud Act.

1 IT IS THEREFORE AGREED AND ORDERED That Respondents Kenneth D. Grammer, dba
2 Vendcorp, Vendcorp Refreshments, Inc. or VSS Refreshments, shall disclose the existence and contents
3 of this Order, as well as any other action required to be disclosed pursuant to RCW 19.110.070, in any
4 business opportunity registration disclosure document approved for use in the state of Washington, such
5 requirement commencing from the date of entry of this Order with the Securities Division.

6 IT IS THEREFORE AGREED AND ORDERED That Respondents Kenneth D. Grammer, dba
7 Vendcorp, Vendcorp Refreshments, Inc. or VSS Refreshments, shall inform all employees and agents who
8 offer business opportunities in the state of Washington of the existence and contents of this Order for a
9 period of three years from the date of entry of this Order with the Securities Division.

10 IT IS THEREFORE AGREED That Respondents Kenneth D. Grammer, dba Vendcorp, Vendcorp
11 Refreshments, Inc. or VSS Refreshments, shall reimburse the Securities Division \$500 for its costs of
12 investigation of this matter prior to the date of entry of this Order with the Securities Division.

13 IT IS THEREFORE AGREED That Respondents Kenneth D. Grammer, dba Vendcorp, Vendcorp
14 Refreshments, Inc. or VSS Refreshments, each waive their rights to hearings in this matter.

15 IT IS THEREFORE ORDERED that SDO-46A-99, Summary Order to Cease and Desist and
16 Denying Business Opportunity Registration, is hereby vacated.

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21 Respondent Kenneth D. Grammer, dba Vendcorp, and as President of Vendcorp Refreshments, Inc.
22 dba VSS Refreshments, and individually:

23 Signed this _____ day of _____, 2000:

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(Signature)

This Order entered by the Securities Division this _____ day of _____, 2000.

Deborah R. Bortner
Securities Administrator

Presented by: _____
Brad Ferber
Securities Examiner

Approved by: _____
Michael E. Stevenson
Chief of Enforcement

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CONSENT ORDER

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
(360) 902-8760

Vendcorp Refreshments, Inc.

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